Remarks

The Examiner's Office action mailed January 27, 2009 has been reviewed. Claims 2, 9, 11, 12, 16, 21, 24, 25, 32, 34, 42, 44, 45, 52, 54, 55, 59, and 67 have been amended. In view of the following remarks, Applicant respectfully submits that the application is in condition for allowance.

<u>Claim Rejections Under 35 U.S.C. § 112</u>

Claims 2-67 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Regarding claim 2, the Examiner states "the preamble recites various instances of electronically processing or transmitting messages. It is not clear what the scope of involvement of a machine is."[1] As an initial matter, Applicant respectfully points out that the terms "processing" and/or "transmitting" do not appear in the preamble.

The Examiner also asserts that "it is not clear what the scope of the involvement of a machine is" and further inquires "Does a machine merely transmit information in the form of messages or is there some analysis performed on the information itself? Does "processing" merely require enough functionality to instruct a network to transmit the message or is deeper analysis of the specific data transmitted required?"[2] The Examiner further asserts "Also unclear is the scope of "determining" (e.g., determining if the update flag is set, determining a price for a quantity). Again, are these determinations merely based on retrieving the right data or is there deeper analysis of the specific data?"[3] As explained below, Applicant submits that the one of ordinary skill in the art would be able to determine the meaning of "processing" and "determining" as recited in claim 2.

With regard to definiteness, the MPEP states:

> "The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

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[1] *See* Office action at page 2.
[2] *See* Id.
[3] *See* Id.

(A) The content of the particular application disclosure;

(B) The teachings of the prior art; and

(C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

The Examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available"[4]

Furthermore, "[s]ome latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to Applicants' to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by Applicants' satisfy the statutory requirement."[5]

The Court of Appeals for the Federal Circuit (CAFC) has held that a decision on whether a claim is invalid under section 112 second paragraph requires a determination of whether those skilled in the art would understand what is claimed when the claim is read in light of the specification.[6] Moreover, the CAFC has found that "the definiteness requirement, however, does not compel absolute clarity" and "If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds."[7]

The preamble previously specifically recited that the trading system comprised and was operable using at least one processor. The detailed description also described the trading system as having and operable using a processor. Applicant asserts that the trading system as specified in the claims is clearly a "machine" under the "machine-or-transformation test" identified by the federal circuit or the USPTO. While Applicant has moved the processor to the body of the claims, Applicant believes the scope is the same and a machine is clearly identified in the claims.

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[4] MPEP § 2173.02.

[5] *Id.*

[6] *Orthokinetics, Inc. v, Safety Travel Chairs, Inc.* 806 F.2d 1565, 1575 (Fed Cir. 1986).

[7] *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342 (Fed Cir. 2005).

Processing messages, determiming if the update flag is set, and determining prices are described throughout the specification. Regarding the occurences of "processing" in claim 2, the present application discloses "The trading system 402 includes a processor 404 configured to process messages and other data from the trading exchange 104 and/or other traders and/or devices. The processor 404 processes the messages and/or other data and determines if a response is to be generated. If a response is to be generated, the processor determines the appropriate response." As another example of "processing," the present application discloses:

> "In this example, the first message 304 is received and processed 306 at time unit one. The second message is received but not processed. The trading system 106 takes two seconds to process the first message. The trading system processes the next message received after the processing is complete for the first message. In this example, the next message is the third message received at the third second. The trading system takes two seconds to process the third message. Therefore, the trading system receives the fourth message, trips the update flag, but does not process the fourth message. When processing is complete for the third message, the trading system processes the next received message, which is the fifth message. This process continues until processing is complete."[8]

Regarding "determining," the present application discloses "When the trading system has completed processing the prior message, the trading system determines if the update flag has been tripped. If the update flag has been tripped, the trading system synchronizes the order data for the selected market or markets."[9] The present application further discloses "If the update flag has been tripped, the standard trader 108 sends an OL request message to the trading exchange 104 requesting all current information for one or more selected markets. The trading exchange 104 returns an OL response message to the standard trader 108 with all current information for the requested markets. The standard trader 108 determines a new price for orders based on the current market information just received."[10] As another example, the present application discloses "the message processor 520 checks the internal update flag in the snapshot trade manager 518 when the message processor has completed processing a message. If the internal update flag has been triggered, the message processor 520 determines the next course of

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[8] *See* Application, paragraph 65
[9] *See* Application, paragraph 63.
[10] *See* Application, paragraphs 72 and 73.

action."[11] Accordingly, Applicant submits that the meaning of terms "processing" and "determining" as recited in claim 2 are decernable and that those skilled in the art would understand their meaning when read in light of the specification. Other examples exist.

With respect to claim 2, the Examiner also states "the second step (i.e., the receiving a plurality of second messages step) requires the second messages to be received while processing the first message, which means that the update flag in the third step is always going to be set."[12] The Examiner then asks "Does this mean that none of the order price change information from the second messages is processed? Alternatively, is only certain price change information from one or a subset of the second messages processed? If only certain price information is processed, how it is determined which price information to process and what is the extent of processing of the price information? Is it merely updated or is analysis performed on the price information to yield further derived data? It is not clear what is occurring in these steps."[13] Again, Applicant submits that one of ordinary skill in the art would be able to determine the plain meaning of the claim terms, including "skipping and not processing each order price change information of the plurality of second messages", which on its face specifies that the price change information in the plurality of second messages is not processed if the update flag is set, and transmitting messages, particularly in view of the specification, which includes descriptions of the system and multiple examples.

The Examiner's statement that "the update flag in the third step is always going to be set" is not correct. Claim 2 recites "*setting an update flag **upon receiving** a first one of the plurality of second messages **while processing** the first message.*" This does not mean that the update flag is always set. As one of ordinary skill in the art would understand, the update flag is set when a first one of multiple second messages are received at the trading system while the first message is being processed. Applicant also points out that there is **no** reference in claim 2 to processing a "subset" or "certain price information."

MPEP 2111.01 requires the Examiner to interpret the claims as broadly as is reasonable and consistent with the specification. This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. "Plain meaning"

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[11] *See* Application, paragraphs 116.
[12] *See* Office action at page 3.
[13] *See* Id.

refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art.[14] "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application."[15] Further, an Applicant may give a term a meaning in the specification. Thus, the Examiner can either give a claim term the meaning that the term would have to a person of ordinary skill in the art or the plain and ordinary meaning with reference to the specification.

Claim 2 clearly recites skipping and not processing each order price change information of the plurality of second messages at the trading system **if** the update flag is set. Claim 2 further clearly recites transmitting a third message from the trading system requesting current market information from the exchange system **if** the update flag is set.

The present application provides:

"The trading system processes a message from the trading exchange 104. When the trading system completes the processing, the trading system will process a message received approximately when the processing was completed. The trading system may be configured to process a message received immediately after processing is completed on the prior message, received at the same time processing is completed on the prior message, or received just prior to the completion of the processing of the prior message. In one embodiment, the trading system is configured to process a next message received at or immediately after the prior message processing is completed."

"Accordingly, the trading system **may skip messages received while it is processing another message**. In one embodiment, if a message is received from the trading exchange 104 while the trading system 106 is processing a prior message, the trading system trips an update flag. **In one example of this embodiment, the trading system does not process the order data in the message. In another example, the trading system dumps the message and its contents while tripping the update flag or after the update flag is tripped**."[16] (emphasis added)

Accordingly, claim 2, whether read alone, or in light of the specification, particularly points out and distinctly claims "setting an update flag upon receiving a first one of the plurality of second messages **while** processing the first message" and "upon at least approximately completing processing the first message, determining if the update flag is set at the at least one processor and, *if set, skipping and not processing* each order price change information of the

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[14] MPEP 2111.01.
[15] Id.
[16] *See* Application, paragraphs 61 and 62.

plurality of second messages at the trading system and, *if set,* transmitting a third message from the trading system requesting current market information from the exchange system."

The Examiner asserts that "Claim 2 fails to define the content of the first message at the trading system. What is the nature of the content of the first message?"[17] The Examiner also states "Additionally, the data from the first through fifth messages is never explicitly used to perform further analysis that requires this specific type of data; therefore, the data appears to be non-functional. Effectively, claim 2 recites a system that sends five messages back and forth. It is not clear what the functional constraints attributed to claim 2."[18] The MPEP states that "[t]he fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. § 112, second paragraph …. Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification."[19] The specification discloses:

> "One or more messages may be transmitted between the trading exchange 104 and one or more traders 108-116. The messages may include one or more requests, responses, and/or notifications."[20]

and

> "In this example, the first message 304 is received and processed 306 at time unit one. The second message is received but not processed. The trading system 106 takes two seconds to process the first message. The trading system processes the next message received after the processing is complete for the first message."[21]

Applicant submits that one of ordinary skill in the art would understand the meaning of the first message when read in light of the specification.

Regarding the Examiner's statement that "the data from the first through fifth messages is never explicitly used to perform further analysis that requires this specific type of data," Applicant submits that this statement directly contradicts the language of claim 2. Although the price change information in the plurality of second messages may not be processed, due to being skipped when the update flag is set, the fourth message, which includes the current market

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[17] *See* Id.
[18] *See* Id.
[19] *See* MPEP § 2173.05(b).
[20] *See* Application, paragraph 47.
[21] *See* Application, paragraph 65.

information, is processed to determine a price for a quantity of an article for the market. Moreover, the third message requests current market information from the exchange system and the fifth message includes at least one member of a group consisting of an offer to sell the quantity of the article at the price and a bid to buy the quantity of the article at the price. Thus, the information in the third, fourth, and fifth messages are used in different ways in the claims. Accordingly, Applicant requests that the Examiner remove this rejection or identify which provision of the MPEP or 35 U.S.C. on which this rejection is based. It does not appear to be an appropriate rejection under 35 U.S.C. § 112.

The Examiner's characterization of claim 2 as effectively reciting a system that only sends five messages back forth is also contrary to the language of claim 2. For example, claim 2 recites a method that involves the following functions: electronically processing a first message at at least one processor of the trading system, receiving a plurality of second messages at the trading system while processing the first message, the plurality of second messages each comprising order price change information, setting an update flag at the at least one processor of the trading system upon receiving a first one of the plurality of second messages while processing the first message; upon at least approximately completing processing the first message, determining if the update flag is set at the at least one processor and, if set, skipping and not processing each order price change information of the plurality of second messages at the trading system and, if set, transmitting a third message from the trading system requesting current market information from the exchange system, upon at least approximately completing processing the first message and after determining if the update flag is set, receiving a fourth message at the trading system comprising the current market information, processing the fourth message at the at least one processor of the trading system and determining a price for a quantity of an article for the market based on the current market information, and transmitting a fifth message from the trading system via the at least one processor, the fifth message comprising at least one member of a group consisting of an offer to sell the quantity of the article at the price and a bid to buy the quantity of the article at the price. Applicant submits that these functional limitations involve more that merely transmitting five messages back and forth.

The Examiner asserts "Claim 2 recites that the method is "operable using at least one processor" however, this recitation is limited to the preamble and it is not clear in the body of the

claim what the extent of involvement of the processor is, especially regarding core steps of the invention (including specific calculation steps, such as the price calculation recited in dependent claims 3-10)."[22] The MPEP instructs that "determination of whether a preamble limits a claim is made on a case-by-case basis in light of the facts in each case; there is no litmus test defining when a preamble limits the scope of a claim." Furthermore, "[i]f the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim. Indeed, when discussing the claim in such a circumstance, there is no meaningful distinction to be drawn between the claim preamble and the rest of the claim, for only together do they comprise the 'claim'."[23] Applicant has amended claim 2 to clarify in the body of the claim the extent of involvement of at least on processor.

The Examiner asserts that claims 11-33 "recite similar limitations as those found in claims 1-10; therefore, the same rejections apply."[24] Applicant submits that claims 11-43 comply with the second paragraph of 35 U.S.C. § 112 for substantially the same reasons discussed above with respect claims 2-10.

The Examiner further states "Claims 34-43 recite similar limitations as those found in claims 1-10; therefore, the same rejections apply" and "Furthermore, it is not clear what the metes and bounds of a "snapshot view of the market" are. How is a trade performed "according to a snapshot view of the market" (as recited in independent claim 34)? Also, claim 34 recites that the "software application [is] stored in memory of the system"; however, the memory is not explicitly set forth as a system element. Therefore, it is not clear if the memory itself is meant to be a limiting element within the scope of claims 34-43. Also unclear is the scope of "performing at least one trade at the trading system." Is the trade actually executed? Also, if the trade is executed, is it executed by the trading system or merely at the trading system (e.g., by a user inputting data at a trading system terminal)?"[25]

Regarding the Examiner's statement that claims 34-43 recite similar limitations as those found in claims 1-10; therefore, the same rejections apply, Applicant submits that claims 34-43

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[22] *See* Office action at page 4.
[23] MPEP 2111.02 . (citing *Pitney Bowes Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999).
[24] *See* Office action at page 4.
[25] *See* Id.

are in compliance with the second paragraph of 35 U.S.C. § 112 for substantially the same reasons discussed above with respect to claims 2-10.

Applicant also submits that one of ordinary skill in the art would understand the meaning of "perform at least one trade for a market with the trading exchange according to a snapshot view of the market" as recited in independent claim 34, particularly in view of the specification. As described in the application:

> "Orders are used to make trades in a market. Within each market, an order specifies the price of the trade article, a quantity/amount of the trade article to be traded, and/or a time frame or a specified time in which the trade is to be completed."[26]

and

> "In one embodiment, each of the traders 108-116 in the trading system 106 is configured to trade using a snapshot trading feature. The snapshot trading feature enables a trader 108-116 to obtain a current snapshot view of a selected market or markets and to place an order based the current and immediate order data, and not data that may be old or not otherwise current. Prior systems performed trades based on serially processed trade data. Therefore prior systems do not have a current view of the market."[27]

Accordingly, Applicant submits that the meaning of "perform at least one trade for a market with the trading exchange according to a snapshot view of the market" as recited in independent claim 34 is decernable and that those skilled in the art would understand the meaning when read in light of the specification. Moreover, Applicants point out that claim 35 actually defines the "snapshot view of the market" as comprising current market information and the at least one trade comprises an order, which is consistent with the specification.

The Examiner asserts that claims 44-67 "recite similar limitations as those found in claims 1-10 and 34-43; therefore, the same rejections apply."[28] Applicant submits that claims 44-67 are in compliance with the second paragraph of 35 U.S.C. § 112 for substantially the same reasons discussed above with respect claims 2-10 and 34.

In view of the above, Applicant submits that claims 2-67 are in compliance with 35 U.S.C. § 112 second paragraph and respectfully request that Examiner remove the rejections of these claims.

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[26] *See* Application, paragraph 30.
[27] *See* Application, paragraph 56.
[28] *See* Office action at page 5.

Claim Rejections Under 35 U.S.C. § 101

The Examiner has rejected claims 2-67 as being directed to non-statutory subject matter. In particular, the Examiner states "While claims 2-67 recite many steps of transmitting data electronically or processing data at a machine, the mere transmitting of, storing of, and retrieval of data is deemed to be insignificant post-solution activity" and "Claims 2-67 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing, thereby failing the machine-or-transformation test; therefore, claims 2-67 are nonstatutory under § 101."[29] Applicant disagrees and submits that the Examiner's position is inconsistent with recent decisions by the Board of Patent Appeals and Interferences.

The test set forth in *In Re Bilski* to determine whether a claimed process recites patentable subject matter under § 101 is whether: (1) it is tied to a particular machine apparatus, or (2) it transforms a particular article into a different state thing.[30] The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article.[31] Certain considerations are applicable to analysis under either branch. First, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility.[32] Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity.[33]

In Re Bilski did not address whether reciting a computer in a process claim sufficiently ties a process to a machine. However, the Board of Patent Appeals and Interferences (BPAI) has indicated that a processor, memory, or databases recited in the claims is sufficient to tie a process to a machine. For example, in *Ex parte Borenstein*, the BPAI found:

> "while the storage of information in independent claim 1 could arguably be done as a mental process, the recitation of a structured relationship between multiple stores that requires "path information" inherently implies that this information must be stored on a computer or

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[29] *See* Office action at page 7.
[30] *In re Bilski*, 545 F.3d 943, at 961-62 (Fed. Cir. 2008).
[31] *Gottschalk v.Benson*, 409 U.S. at 70, 93 S.Ct. 253 (1972).
[32] *Gottschalk v.Benson*, 409 U.S. at 71-72, 93 S.Ct. 253 (1972).
[33] *Parker v. Flook*, 437 U.S. 584, at 590 98 S.Ct. 2522 (1978).

database. This "particular" computer or database is sufficient structure to meet the machine prong of the machine-or-transformation test of *In re Bilski*."[34]

Amended claims 2, 11, 16, 21, 24, 25, 35, 44, 45, 54, 55, 59, 67 define structural and functional interrelationships between a trading system and at least one processor, which permit the trading system's functionality to be realized. The amended claims recite structural components and, thus, constitute a machine or a manufacture within the meaning of 35 U.S.C. § 101. Support for the amendments of claims 2, 11, 16, 24, 35, 44, 45, 54, 59, 67 can be found in the present application, which provides "The trading system 402 includes a processor 404 configured to process messages and other data from the trading exchange 104 and/or other data and determines if a response is to be generated. If a response is to be generated, the processor determines the appropriate response."[35] The present application also provides "The processor 404 controls the reception and transmission of messages from and to the trading exchange 104 through the trading exchange interface 406."[36] The above examples are not meant to be limiting, and other examples exist.

Moreover, regarding "setting an update flag at the at least one processor," as recited in amended claims 2 and 45, the update flag cannot be set without a processor -a flag is electronic. Similarly, the trading system cannot check a flag without a processor since it is electronic as known by those skilled in the art. Setting an update flag at the at least one processor recites structural and functional interrelationships, and because setting the update flag cannot be performed without a processor, it is not extra solution activity.

Accordingly, the recitation of the at least one processor throughout the body of amended claims 2, 11, 16, 24, 44, 45, 54, 59, and 67 establishes sufficient structure to satisfy the machine prong of the machine-or-transformation test. Claims that depend from claims 2, 11, 16, 24, 44, 45, 54, and 59 satisfy the machine prong of the machine-or-transformation test for the same reasons as the claims from which they depend.

For the reasons above, Applicant submits that amended claims 2-24 and 44-67 are directed to statutory subject matter, and, thus, in compliance with 35 U.S.C. § 101.

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[34] *Ex parte Borenstein*, Appeal 2008-3475 (BPAI 2009).
[35] *See* Application, paragraph 92.
[36] *See* Application, paragraph 93.

Regarding claims 25-43, Applicant points out that these claims are directed to a system and not a method or process. Accordingly, the machine-or-transformation test set forth in *In Re Bilski* does not apply. Furthermore, independent claims 25 and 34 clearly recite structural components and define functional relationships there between. For example, claim 25 recites a processor comprising a message processor and a snapshot trade manager and recites the functional relationship between these components.

Amended claim 34 recites a memory, a processor, and a software application stored in the memory of the system and executable on the processor to perform at least one trade for a market with the trading exchange according to a snapshot view of the market. MPEP 2106.01 provides that when software is recorded on some computer readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases. A computer-readable medium encoded with a computer program is a computer element, which defines the structural and functional interrelationships between the computer program and the rest of the computer which permits the computer program's functionality to be realized and is statutory. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer.

In view of the above, Applicant submits that claims 2-67 recite statutory subject matter under 35 U.S.C. § 101 and respectfully requests that Examiner remove the rejections of these claims.

<div align="center">Claim Rejections Not Based on Art</div>

The Examiner states "Because claims 2-67 are so indefinite, no art rejection is warranted as substantial guesswork would be involved in determining the scope and content of these claims."[37] For the reasons discussed above, Applicant submits that one skilled in the art would understand what is claimed when the claims 2-67 are read in light of the specification and, thus, claims 2-67 are in compliance with 35 U.S.C. 112.

However, because the Examiner did not reject claims 2-67 based on prior art, Applicant submits that a subsequent action that includes claim rejections based on art cannot be made Final. MPEP 706.07(a) provides " a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings *will not* be made final if it includes

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[37] *See* Office action at pages 7.

a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. No amendment made herein necessitates a new search. MPEP 706.07(a) also provides "Where information is submitted in a reply to a requirement under 37 CFR 1.105, the examiner may **NOT** make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment." (emphasis added).

Furthermore, MPEP 706 provides "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." In the present Office action, the Examiner has not cited any particular art upon which such rejections would be based, has not designated particular parts of such art relied upon, and has not explained the pertinence of such art. Accordingly, so that Applicant is provided a fair opportunity to respond, in the event that a subsequent action includes claim rejections, Applicant submits that such an action should be non-Final.

<u>Request for Information Under 37 C.F.R. 1.105</u>

The Examiner has requested the Applicant to provide information under 37 C.F.R. 1.105. The requested information is enumerated below:

(1)   A citation and a copy of each publication that any of the applicants relied upon to develop the disclosed subject matter that describes the applicant's invention, particularly as to developing the messaging details of the claimed invention;

(2)   For each publication, a concise explanation of the reliance placed on that publication in the development of the disclosed subject matter. Applicant's provisional application discusses how the invention is based on the existing Intercontinental Exchange (ICE);

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(3)   Which aspects of Applicant's invention are inherent to or derived from the capabilities of the ICE and which aspects of Applicant's invention are Applicant's improvements thereof.

(4)   Which features in the claimed invention correspond to Applicant's specific improvements over traditional prior art methods/systems of executing ICE transactions; and

(5)   Information regarding any related products or services in the art of trading, especially in regard to trading systems that operate based on electronic message transmissions.[38]

Applicant's Reply to Request for Information

In compliance with 37 C.F.R. 1.105, Applicant provides the following replies to the above enumerated request.

(1)   Applicant has not and does not represent reliance on any publication to develop the disclosed subject matter describing Applicant's invention. In the provisional application, Applicants identified the ICE as an example of a commodity trading exchange. The attached Information Disclosure Statement and Form identify various Intercontinental Exchange documents related to the ICE described in the provisional application. No other information is known and/or readily available to Applicant or Assignee.

(2)   Again, Applicant has not and does not represent reliance on any publication to develop the disclosed subject matter describing Applicant's invention. The provisional application does not describe the invention as being "based on" the existing Intercontinental Exchange System. Rather, the provisional application identifies the ICE as an example of a commodity trading exchange. Moreover, the provisional application and the present application discuss the advantages of the present invention over such trading exchanges throughout. Other than what Applicant described in the provisional and

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[38] *See* Office action at pages 8 and 9.

present application, no other information is known and/or readily available to Applicant or Assignee.

(3)   Applicant has not and does not represent that any aspects of Applicant's invention was derived from the capabilities of the ICE. The provisional and present applications disclose for example that the Trademaker may connect to trading exchanges, such as ICE. Other than what Applicant described throughout the provisional and present application, no other information is known and/or readily available to Applicant or Assignee.

(4)   Other than what Applicant described in the provisional and present application, no other information is known and/or readily available to Applicant or Assignee. Please see paragraphs 57 to 61 and FIG. 2 of the present application.

(5)   Other than what Applicant described in the provisional and present application, no other information is known and/or readily available to Applicant or Assignee.

Amended independent claims 2, 11, 16, 24, 25, 34, and 44 are patentable for reasons identified above, and withdrawal of the rejections of those claims is requested. Since the claims depending directly or indirectly therefrom include all of the limitations of the respective base claims, which are believed patentable, these claims also are believed to be allowable. Withdrawal of the rejections of those claims also is requested.

Because the independent claims are believed patentable, it is not necessary to discuss patentable limitations of claims depending therefrom, the references, or the rejections. The lack of a discussion of patentable limitations of those dependent claims should not be construed to mean that there are not patentable limitations in those dependent claims.

All reasons for patentability of the independent and dependent claims have not necessarily been discussed herein. No implication or construction should be made therefore.

Applicant has no further remarks with regard to any references cited by the Examiner and made of record, whether or not acted upon by the Examiner in the action's rejections, even if specifically identified in the action or any other paper or written or verbal communication. No

implication or construction should be drawn about any review of the same by Applicant or Applicant's attorney.

Based on the foregoing, it is submitted that the Applicant's claims 2-67 are patentable over the references of record. Issuance of a Notice of Allowance is solicited.

Applicant's attorney welcomes the opportunity to discuss the case with the Examiner in the event there are any questions or comments regarding the response or the application.

This is intended to be a complete response to the Examiner's Office action mailed on January 27, 2009.

Respectfully submitted,

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